

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LUTHER MICHAEL HARRIS, #1152097 §

VS. § CIVIL ACTION NO. 6:06cv490

DIRECTOR, TDCJ-CID §

AMENDED ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge John D. Love. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for denying in part Petitioner's petition for writ of habeas corpus. On July 10, 2008, Petitioner filed objections; however, they inadvertently were not docketed as objections and therefore not reviewed before this Court issued the Order Adopting Report and Recommendation.

On September 17, 2008, the docket sheet was corrected, and this Court now has reviewed Petitioner's objections and determines that they lack merit. This Court finds that the Magistrate Judge's findings and conclusions are correct, and adopts them as the Court's findings and conclusions. The Court therefore

ORDERS that the August 15, 2008, Order Adopting Report and Recommendation (dkt#22) is **WITHDRAWN**;

ORDERS, ADJUDGES, and DECREES that Petitioner's following claims are **DISMISSED WITH PREJUDICE**:

1. He was denied effective assistance of trial counsel by his attorney's failure to:
 - a) Request an accomplice witness instruction in the jury charge for Jack Raburn, Eric Tipton, and Gary Hale,
 - b) Investigate and call Tara Castro as a witness, and
 - c) Object to the presentation of a mop ringer as a deadly

weapon and to the DNA expert witness's testimony regarding blood spots; and

2. There was no evidence presented that he used a mop ringer as a deadly weapon.

The Court further

ORDERS that Petitioner is **DENIED** a certificate of appealability on these claims.

SIGNED this 24th day of September, 2008.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE